

May 17, 2019

Re: Seattle Surveillance Ordinance Implementation

Dear Chair Harrell and Members of the Governance, Equity, and Technology Committee:

We write to update you regarding the implementation of the Seattle Surveillance Ordinance, SMC 14.18, and in particular to highlight concerns we believe the Council will need to address as implementation proceeds. We offer these concerns, as well as suggestions to address them, in the spirit of understanding that this Committee, the Council as a whole, the agencies implementing the Ordinance, and the Community Surveillance Working Group (or CSWG, on which we both serve), are all going through the process of reviewing surveillance technologies for the first time, and that that process will inevitably involve some refinement.

We are also cognizant that Seattle has a valuable leadership opportunity in this Ordinance—it is the strongest ordinance of its kind, embodying a community process that will allow Seattle residents to get the benefits of technology, while also ensuring civil rights and civil liberties are protected. While other jurisdictions have considered or have passed similar ordinances, none is as far down the path as we are, and many are looking to Seattle for leadership. Seattle’s status as a technology hub demands that our leaders recognize the potential harms that misuse of data and surveillance can entail—and work to address them meaningfully, rather than rubber-stamping existing, inadequate practices.

The two concerns we wish to raise regarding implementation are: (1) the mechanism by which the Council approves both the acquisition of surveillance technologies and adopts enforceable procedures and protocols pertaining to them; and (2) the timeline by which the City conveys these surveillance technologies to the CSWG and eventually to the Council.

1. Approval Mechanism

The current mechanism for approval under the Seattle Surveillance ordinance is predicated on Council approval of both the acquisition of the technology and the relevant Surveillance Impact Report (SIR). SMC 14.18.020(A) provides, in relevant part:

“...any City department intending to acquire surveillance technology shall, prior to acquisition, obtain Council ordinance approval of the acquisition and a surveillance impact report for the technology.”

In addition, SMC 14.18.020(F) provides in relevant part:

“Following Council approval of the acquisition and the terms of the SIR, the department may acquire and use the approved surveillance technology only in accordance with the procedures and protocols set forth in the SIR.”

We believe the underlying purpose of the Ordinance is to allow the Council, through its public review process, to assess civil liberties concerns around a given surveillance

technology in light of the agency’s assertions with regard to that technology, and to approve the acquisition and use of the technology subject to a set of clear, transparent, and enforceable rules around surveillance technologies that will give community members confidence that their civil liberties are being protected (or alternatively, to determine that the technology presents problems that should preclude its use by the City, and therefore deny the acquisition).

We believe that there is a significant misalignment between this overarching goal of creating clear and transparent rules around surveillance technologies, and the underlying ordinance requiring SIR approval, for the following reasons:

A. SIRs do not contain clear “procedures and protocols.”

SMC 14.18 specifies a number of questions about a given technology that an agency must answer with information provided to Council. Much of this information elicits agency assertions about how technologies are used, pointers to policies outside the SIRs, references to future processes for creating rules around technologies, and a great deal of other information—much of it completely outside the realm of “procedures and protocols.” These SIRs also include a great deal of public comment, and the result is a lengthy document running into the hundreds of pages, with fragmentary, if any, “procedures and protocols,” some of which may not even be in the document itself.

We do not believe that adopting SIRs wholesale—as this Committee proposes to do for the first two technologies under review by the Committee (SDOT CCTVs and LPRs)—will accomplish the goal of creating clear, transparent, and enforceable protections for civil liberties in the context of a given technology. The impact of Council approval of an SIR is entirely unclear, given the amount of disparate information SIRs contain, most of which does not pertain to “procedures and protocols.”

B. SIRs largely reflect existing agency practices, and may not effectively address civil liberties concerns.

All of the 14 SIRs we have reviewed thus far pertain to existing agency practices around a given technology, and all have elicited feedback from ACLU-WA as well as CSWG pointing out civil liberties concerns that remain unaddressed. But the CTO’s response memoranda to those concerns simply stated that the concerns had been addressed—simply by citing agency assertions made in the SIRs that CSWG had already reviewed and determined to be inadequate.

It is critical that the Council not adopt a trust-us approach that simply relies on agencies’ say-so as to how technologies are being used, but rather ensure the creation of clear and transparent policies and procedures that address the civil liberties concerns raised, and allow the public to enforce them. The current SIR structure does not contain a clear mechanism for creating and identifying these policies and procedures.

C. SIRs are often out of date or inaccurate, and fixing them will be lengthy and time-consuming.

CSWG has often pointed out that the SIRs contain inaccuracies, are out of date, or are actively misleading. One SIR, for example, continues to contain a memo from the Seattle Fire Department Chief Harold Scoggins, dated many months prior to the transmission of the SIR, that we were later informed was only a draft and which never led to policy change. Another SIR fails to note the prior acquisition of the company producing the surveillance technology in question, meaning the entire SIR pertains to the capabilities of a set of sensors that have already been replaced by another type with different capabilities. Relying on agencies to update these documents will add more burdens on their already stretched capacity, and may still not result in a document the Council can have confidence in.

D. The legal impact of Council's approval of an SIR is unclear at best.

While the City's Law Department has stated at a CSWG meeting that Council approval of an SIR means that the entire content of an SIR becomes enforceable, the plain language of the ordinance reads differently, specifically calling out "policies and procedures" in the SIR that an agency must adhere to. But when it is unclear what content in an SIR constitutes "policies and procedures;" when other parts of the document point to policies outside the SIR itself; and when what policies there are are largely fragmentary, it is far from clear what adherence to those "policies and procedures" means, let alone how the public can be confident in their enforcement.

Overall, the current SIR documents should be viewed as documentation of internal and external discussions about the technology that can help inform Council as it considers forward-looking policies and procedures. But these SIRs do not effectively serve the purpose of establishing clear and enforceable policies and procedures for the technologies in question.

Based on all of these concerns, we do not believe it is wise for the Council to adopt into law a document hundreds of pages long, containing varied types of information, if the intent is to protect civil liberties and offer transparent and enforceable policies and procedures around surveillance technologies. Instead, we encourage the Council to exercise its inherent legislative authority to approve a simpler set of transparent and enforceable policies and procedures associated with a given technology. The Council could do this either by amending the underlying ordinance to require approval of the technology and associated policies and procedures (but not the entire SIR); or it could include a framework of policies and procedures in the ordinance approving a given technology, and specify that those policies and procedures supersede anything to the contrary in the SIR.

The result of choosing either path would be Council approval of a set of core protocols and procedures specific to the technology under review (no more than 3-5 pages), including a clear statement on how the technology will be used (in the future) and how the protocols and procedures address civil liberties concerns. The basis for these core protocols already exist in the CSWG's Privacy and Civil Liberties Impact Assessment (PCLIA) provided to the Council in connection with each technology. In fact, CSWG has developed and applied a set of template questions (eg, What is the purpose of the technology? What policy exists to

limit it to that purpose? Who will have access to the data? Etc.) that can serve as a guide for the framework Council should actually be approving.

2. Timeline

We also wish to alert the Committee to challenges regarding the currently proposed timeline for the City's public comment, transmission to CSWG, and eventual transmission to the Council, of the remaining surveillance technologies. The current City Master List contemplates a timeline that delivers technologies to CSWG in two major batches—one in August, and a much larger delivery on December 20th. The latter delivery contains some of the most concerning surveillance technologies from a civil liberties standpoint, including drones, facial recognition, and various police technologies. The CWSG will then be expected to produce a civil liberties analysis of these technologies in six weeks, including the holiday season.

We believe this timeline fails to serve the purposes of the ordinance, including meaningful public review and comment, a robust civil liberties assessment by the CSWG, and quick review of the most concerning technologies so they do not continue to be used without such review. For that reason, we are proposing a revision to the timeline that would prioritize the most concerning technologies from a civil liberties perspective, and to revise the timeline so those technologies are delivered at a rate of one per month. These revisions are described in the attached document.

This timeline could also help improve the current community outreach process, in which meeting times and places vary and large numbers of technologies are discussed at once. Instead of such large and unpredictable events, the City could instead fix a monthly time and place at which a single surveillance technology could be meaningfully discussed. This would enable Seattle residents to put the time and place on their calendars and allow greater turnout.

We appreciate the efforts of the CTO's office, various City agencies, and the Mayor's office to implement this ordinance effectively. We hope that the suggestions we make can make that process more effective in both advancing innovation and protecting civil liberties, befitting Seattle's status as a technology leader.

Thank you for your consideration.

Sincerely,

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